

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of Applications of)
)
 MOBEX NETWORK SERVICES, LLC) File Nos. 0001082495-0001082548
)
 for Automated Maritime Telecommunications)
 System Along the Mississippi River)

ORDER ON RECONSIDERATION

Adopted: September 20, 2005

Released: September 22, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On July 24, 2003, Warren C. Havens (Havens) requested reconsideration of a June 25, 2003 *Order*¹ issued by the Public Safety and Private Wireless Division² (Division). The June 25, 2003 *Order* denied Havens’s petition to deny the applications of Mobex Network Services, LLC (Mobex) to renew Mobex’s licenses for Automated Maritime Telecommunications System (AMTS) stations along the Mississippi River. For the reasons discussed below, we deny Havens’s petition for reconsideration.

2. *Background.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.³ The Commission has designated two spectrum channel blocks for AMTS operations.⁴ The Commission’s practice under the former, site-based AMTS rules was that it would not assign both frequency blocks at one time to one licensee, but would permit a licensee with one frequency block to obtain the other block upon a showing of need.⁵ Under former Section 80.475(a) of the Commission’s Rules, in effect when the licenses at issue were initially granted, AMTS applicants were required to serve a navigable inland waterway that is less than 150 miles in length in its entirety.⁶ Applicants proposing to serve a navigable inland waterway more than 150 miles in length were required to provide continuity of service along at least sixty percent of the waterway.⁷

¹ Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12309 (WTB PSPWD 2003) (*Order*).

² The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

³ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

⁴ AMTS Channel Blocks A (217.5-218/219.5-220 MHz) and B (217-217.5/219-219.5 MHz). See 47 C.F.R. § 80.385(a)(2).

⁵ See Amendment of the Commission’s Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22607 ¶ 44 (2000) (*Fourth Report and Order and Third Further Notice*).

⁶ See 47 C.F.R. § 80.475(a) (2001).

⁷ *Id.*

3. On August 11, 1982, the Commission granted Mobex's predecessor in interest, Waterway Communications System, Inc. (Watercom), the authority to construct and operate an AMTS along the Mississippi River.⁸ Watercom's system was authorized to operate on AMTS Channel Block A. On March 2, 1984, Watercom's application for Channel Block B authorization for its Mississippi River system was placed on public notice.⁹ In the application for the additional frequency block, Watercom included a supporting traffic analysis, propagation test results, and studies of potential intra-system interference.¹⁰ Based on Watercom's showing of a need for AMTS Channel Block B, and in the absence of any petitions to deny, the Commission granted Watercom's application on April 5, 1984. On January 15, 1987, in a *Memorandum Opinion and Order*, the Commission denied a petition by Riverphone Inc. (Riverphone) seeking to modify or revoke Watercom's Channel Block B authorization.¹¹ The Commission stated that during the Channel Block B application's 30-day petition to deny period, Riverphone failed to raise with the Commission any concerns regarding possible anti-competitive effects.¹² The Commission stated that there was no evidence in the record to support Riverphone's assertion that Watercom applied for the Channel Block B spectrum for the purpose of blocking competition.¹³

4. On November 16, 2000, the Commission proposed a transition for its licensing approach for AMTS from site-based to geographic licensing.¹⁴ In this connection, it sought comment on whether to permit a single geographic licensee to acquire more than one frequency block in the same area, either initially or by partitioning and disaggregation.¹⁵ All of the commenters, including Mobex and Havens, argued that such a limitation was unnecessary.¹⁶ On April 8, 2002, in the *Fifth Report and Order* in PR Docket No. 92-257, the Commission concluded that prohibiting a single geographic licensee from acquiring more than one AMTS frequency block in the same area would be unnecessarily restrictive.¹⁷ The Commission concluded that, given the competition from commercial mobile radio service providers such as VHF public coast and 220-222 MHz, allowing one applicant to acquire both AMTS channel blocks in the same geographic area would not have anti-competitive consequences for the public.¹⁸ Furthermore, it noted no discernable harm to the public in granting both frequency blocks to Watercom along the Mississippi River.¹⁹ Therefore, the Commission stated that a single geographic licensee would

⁸ See Application of Waterway Communications System to Operate Inland Waterways Communications System, *Memorandum Opinion and Order*, FCC 82-360 (rel. Aug. 11, 1982).

⁹ *Public Notice*, No. 1211 (rel. Mar. 2, 1984).

¹⁰ See Waterway Communications System, Inc., *Order*, FCC 86-230, ¶ 3 (rel. May 8, 1986).

¹¹ See Petition of Riverphone, Inc. to Modify or Revoke Licenses of Waterway Communications System, Inc., *Memorandum Opinion and Order*, 2 FCC Rcd 239 (1987) (*Riverphone*).

¹² *Id.* at 239-240 ¶ 10.

¹³ *Id.* at 240 ¶ 11.

¹⁴ *Fourth Report and Order and Third Further Notice*, 15 FCC Rcd at 22601 ¶ 30.

¹⁵ *Id.* at 22607 ¶ 44.

¹⁶ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6704 ¶ 41 (2002).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

be permitted to acquire more than one AMTS frequency block in the same geographic area, either initially or by partitioning and disaggregation.²⁰

5. On November 13, 2002, Mobex's applications to renew the licenses for its AMTS Mississippi River stations were placed on public notice.²¹ On December 13, 2002, Havens filed a petition to deny, arguing that the applications should either be dismissed or processed only with respect to one frequency block. The Division denied the petition to deny in an *Order* released on June 25, 2003. With respect to Havens's argument that Mobex did not demonstrate a need for both blocks, the Division found that Mobex's renewal applications were not defective under the Commission's policy regarding assignment of both AMTS frequency blocks to site-based AMTS licensees, because the prior limitation on assigning both blocks at the same time applied only to initial applications, not renewal applications.²² The Division stated that, to the extent Havens was contesting the original 1984 Channel Block B grant to Watercom, his challenge was untimely.²³ With respect to Havens's argument that the authorization should not be renewed for both channel blocks because the additional need that Watercom forecasted never materialized, the Division concluded that renewal of the licenses was not conditioned on Mobex demonstrating that both AMTS channel blocks were being fully utilized.²⁴ Finally, with respect to Havens's argument that permitting Mobex to retain both frequency blocks is anti-competitive, the Division noted that the Commission determined in 1987 and again in 2002 that the grant of both frequency blocks to this system did not present any anti-competitive effects, and that Havens had offered no reason to revisit that conclusion.²⁵ On July 24, 2003, Havens filed a petition for reconsideration of the *Order*. On August 5, 2003, Mobex filed an Opposition to Petition for Reconsideration, and on August 18, 2003, Havens filed a Reply to Opposition to Petition for Reconsideration.

6. *Discussion.* Havens argues that the *Order* misapplied the Commission's policy regarding the assignment of both AMTS frequency blocks to site-based AMTS licensees.²⁶ He maintains that the requirement to demonstrate need for both blocks should apply for the life of the license, and that to construe it as applying only to the initial showing renders the requirement meaningless.²⁷ We do not agree. As the *Order* noted, the licenses for the stations at issue have been renewed previously without any additional showing of need.²⁸ Further, as noted above, grant of Mobex's renewal applications is not conditioned on Mobex demonstrating that both AMTS channel blocks are being fully utilized. We again conclude that neither Watercom nor Mobex was required under the Commission's rules and policies to demonstrate any particular level of loading in order to renew the licenses for both channel blocks.²⁹ When meeting a target or maintaining a particular status is a condition of retaining a license, that

²⁰ *Id.* Notably, no entity sought reconsideration of these conclusions.

²¹ *Public Notice*, No. 1334 (rel. Nov. 13, 2002).

²² *Order*, 18 FCC Rcd at 12311 ¶ 7.

²³ *Id.* at 12311 n.24.

²⁴ *Id.* at 12311 ¶ 8.

²⁵ *Id.* at 12311 ¶ 9.

²⁶ Petition for Reconsideration at 5-6.

²⁷ *Id.*

²⁸ *See Order*, 18 FCC Rcd at 12311 ¶ 7.

²⁹ As the Commission stated in 1987, "To force WATERCOM to redesign and engineer its system at this late date would be grossly inequitable . . ." *Riverphone*, 2 FCC Rcd at 240 ¶ 11.

condition is set forth expressly in the Commission's rules or in the license grant.³⁰ No such condition was imposed on the Mobex licenses.

7. Havens further argues that that the Division should not have dismissed as untimely his to challenge the Commission's 1984 licensing decision to grant both frequency blocks to Watercom.³¹ He asserts that his challenge is permitted by Section 312(a)(2) of the Communications Act, which provides that the Commission may revoke a license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."³² We conclude, however, that Watercom's incorrect forecast regarding future traffic (assuming *arguendo* that the forecast was incorrect) is not the type of circumstance that merits license revocation. Again, we note that there was no loading requirement or similar condition put on the assignment of Channel Block B.

8. In addition, Havens continues to argue that permitting one licensee to retain both frequency blocks in these locations is anti-competitive, and that the 1987 and 2002 determinations to the contrary were incorrect.³³ He argues the 1987 determination "merely notes that there were no concerns raised by Riverphone and no evidence in the record regarding anti-competitive effects of the grant of the second block to Watercom," and that this lack of evidence is not a reason to find that there is competition.³⁴ He argues that the 2002 determination "dealt only with future geographic licensing and not existing licenses and their renewals."³⁵ We are not persuaded by Havens's interpretations of these Commission decisions, and we affirm the conclusion that the grant of both frequency blocks did not present any anti-competitive effects. Havens also states that he provided new information by documenting how the existence of the Mobex licenses thwarted his efforts to provide AMTS service along and near the Mississippi River.³⁶ This was not new information, however, for the Commission was aware in 2002 of the previous denials of Havens's applications due to their proximity to licensed Mobex sites.³⁷

9. Finally, we note that reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.³⁸ A petition that simply reiterates arguments previously considered and rejected will be denied.³⁹ In the instant petition, Havens repeats several arguments that the Division already considered and rejected in the *Order*. For example, Havens repeats his arguments that Mobex's applications are defective under the Commission's policy concerning assignment of both AMTS frequency blocks to a site-based AMTS licensee, that the additional service

³⁰ See Mobex Network Services, LLC, *Order*, 19 FCC Rcd 24939, 24943 ¶ 9 (WTB PSCID 2004) (*Transfer Order*) (citing State of Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 16315, 16327-28 ¶ 21 (WTB 2003)).

³¹ See Petition for Reconsideration at 7.

³² 47 U.S.C. § 312(a)(2).

³³ See Petition for Reconsideration at 9.

³⁴ *Id.*

³⁵ *Id.* at 10.

³⁶ *Id.* at 9.

³⁷ See, e.g., Warren C. Havens, *Order on Reconsideration*, 16 FCC Rcd 18046 (WTB PSPWD 2001); Warren C. Havens, *Order*, 16 FCC Rcd 2539 (WTB PSPWD 2001).

³⁸ See WQAM License Limited Partnership, *Memorandum Opinion and Order*, 15 FCC Rcd 13549, 13549 ¶ 2 (2000) (citing WWIZ, Inc., 37 F.C.C. 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c)).

³⁹ *Id.*; see also, e.g., Gaines, Bennett Gilbert, *Memorandum Opinion and Order*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

forecast by Watercom in 1983 never materialized, and that allowing Mobex to retain both AMTS frequency blocks is anti-competitive. After reviewing the instant petition, we believe that Havens has failed to demonstrate that the *Order* contained a material error or did not fully and fairly consider the arguments raised therein. Havens also failed to present additional facts not known or not existing until after his last opportunity to present such matters. We therefore deny Havens's petition.⁴⁰

10. *Conclusion.* In view of the foregoing, we affirm the action denying Havens's petition to deny the applications because Havens did not demonstrate any defect in Mobex's renewal applications under the Commission's rules and policies. Consequently, we deny Havens's petition for reconsideration.

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Warren C. Havens on July 24, 2003 IS DENIED.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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⁴⁰ Havens also argues that the *Order* failed to address the argument in his petition to deny that the renewal applications should have been denied because Mobex failed to meet the coverage requirement in former Section 80.475(a), because it was not providing continuity of service along the Mississippi River. Petition for Reconsideration at 11. This argument is based on an ambiguous sentence in a press release announcing Mobex's acquisition of Watercom, rather than information regarding station construction and coverage. *See id.* at 11-12. The Wireless Telecommunications Bureau recently completed a review of its licensing records to determine whether all licensed AMTS facilities were constructed and operational. *See Transfer Order*, 19 FCC Rcd at 24940-42 ¶¶ 3, 6. Our review of the information obtained in that process confirms that Mobex was in compliance with Section 80.475(a).